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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,293	08/29/2000	Chijioke Chukwuemeka	24065.50	9866
7590	04/02/2004		EXAMINER	
R Lewis Gable Cowan Liebowitz & Latman P C 1133 Avenue of the Americas New York, NY 10036-6799			HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/650,293	Applicant(s) CHUKWUEMKA, CHIJOKE
	Examiner Naeem Haq	Art Unit 3625 <i>MH</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Affidavit/Declaration

The affidavit/declaration of Chijioke Chukwuemeka filed under 37 CFR 1.131 on January 5, 2004 has been considered but is ineffective to overcome the Ling (US 2002/0002538 A1) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Ling reference to either a constructive reduction to practice or an actual reduction to practice. In the present case, the applicant's have not properly established diligence through sketches, notebook entries, etc. for the entire time from prior to the date of the Ling reference up to the date of reduction to practice.

"An applicant must account for the entire period during which diligence is required."

Gould v. Schawlow, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966). Statements that the subject matter "was diligently reduced to practice" is not a showing "but a mere pleading." *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964). Diligence requires that Applicants must be specific as to dates and facts. *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949). (Also see MPEP 2138.06).

Furthermore, the affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country. (See MPEP 715.07(c) and 35 U.S.C. 104).

Final Rejection

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ling (US 2002/0002538 A1) in view of Official Notice and further in view of Applicant's admission of prior art.

Referring to claims 1, 7-9, 11, 14-19, Ling teaches a method of performing at least one transaction between a consumer from a plurality of consumers and a merchant from a plurality of merchants, the plurality of consumers and the plurality of merchants utilizing computing devices connected to a network, said method comprising the following steps of: providing a token to at least one clearing server (page 2, paragraphs [0022] – [0037]; page 11, paragraph [0153] – page 12, paragraph [0160]); determining an amount paid by the consumer to a previous merchant (page 5, paragraph [0075]); combining into a total price, prices of all selected for purchase at least one quote (page 4, paragraph [0063]; page 8, paragraph [0114]). Ling does not explicitly teach communicating a request for an update key to the clearing server, or providing the update key as an authorization to modify the value of the token. However, Ling teaches that a vendor can issue the tokens directly to a consumer (page 4, paragraph [0065]), and that such communication may be encrypted (page 4, paragraph [0067]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate encryption into the method of Ling. One of

ordinary skill in the art would have been motivated to do so in order to ensure that the token was properly protected. Furthermore, since the vendor issues the tokens directly to the consumer, the vendor must inherently have some way (i.e. a key) to decrypt and modify the value of the token. Finally, Ling does not teach rejecting the transaction if the value of the token is less than the total price. However, Official Notice is taken that it is old and well known in the art to reject a transaction if the method of payment is insufficient to cover the cost the transaction. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to reject a transaction in the method of Ling if the token amount was less than the total price. One of ordinary skill in the art would have been motivated to do so in order to ensure that the vendor was properly compensated for the transaction.

Referring to claims 2, 12, 13, and 21-27, Ling teaches that the consumer purchases the tokens from an online vendor (page 4, paragraphs [0063] – page 5, paragraph [0074]). Although the Ling does not explicitly teach that the consumer purchases the tokens from a clearing server, the Examiner notes that the claim language does not explicitly differentiate the merchant and the clearing server as separate and distinct entities. Furthermore, the Examiner notes the vendors in Ling's method must inherently have some sort of server connected to a network since the vendors conduct business over the Internet. Ling does not teach maintaining the token in only random access memory of a computer device. However, Official Notice is taken that it is old and well known in the art to use RAM as a temporary storage for data. Therefore it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to store the token of Ling in only RAM. One of ordinary skill in the art would have been motivated to do so in order to temporarily store the token in an easily accessible location on a computer.

Referring to claims 3-5, Ling teaches that the consumer provides personal and financial information regarding a payment instrument to be used by the consumer (page 6, paragraph [0095]).

Referring to claim 6, Ling teaches that the user may be issued tokens at the time of registration as an incentive (page 6, paragraph [0092]). Ling further teaches the user may purchase additional tokens at a later date (page 7, paragraph [0102]). Therefore the originally issued tokens at the time of registration would inherently be considered "previously purchased" since they were issued prior to the later purchased tokens.

Referring to claims 10 and 27, Ling does not teach that the step of determining said amount paid is performed by polling previous merchants to receive at least two information uploads from the merchant to said clearing server. However, the Applicant admits that polling of previous merchants for information uploads is old and well known (see specification page 2, lines 24-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method Ling. One of ordinary skill in the art would have been motivated to do so in order to obtain an approximation of the consumer's spending.

Conclusion

Since the Applicants have failed to seasonably challenge the Examiner's Official Notice presented in the previous Office Actions, the Examiner now interprets all Official Notices as admitted prior art. *Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946). If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d71, 60 USPQ 239 (CCPA 1943). Also see MPEP 2144.03.*

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (703)-305-3930. The examiner can normally be reached on M-F 8:00am-5:00pm.

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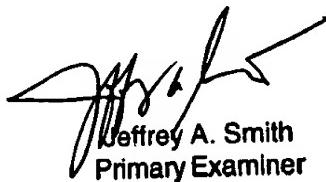
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (703)-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naeem Haq, Patent Examiner
Art Unit 3625

March 31, 2004



Jeffrey A. Smith
Primary Examiner